

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GLENN E. KELLETT

Appeal No. 95-3237
Application 08/154,721¹

ON BRIEF

Before BARRETT, FLEMING and LEE, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection
of claims 1 through 3 and 6 through 11. Claims 4 and 5 have been
canceled.

¹ Application for patent filed November 19, 1993. According
to appellant, the application is a continuation of Application
07/865,947, filed April 9, 1992, abandoned.

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The invention relates to a one piece electrical power line insulator having a universal end clamp which is suitable for substantially horizontal or vertical applications.

The independent claim 1 is reproduced as follows:

1. A one piece electrical power line insulator and universal end clamp device, comprising:

an electrical insulator having first and second ends;
and

a fixed position conductor clamp permanently attached to the second end of the insulator, said clamp being in a fixed position relative to the insulator and having a body defining a saddle for receiving a conductor when the insulator is extending either substantially horizontally or substantially vertically from a line post, the saddle of the clamp extending transversely of a central axis extending longitudinally of the device, the saddle of the clamp extending transversely of a central axis extending longitudinally of the device, the saddle being offset at a downward tilting angle from the perpendicular to the central axis so that the saddle may receive and hold a conductor when the device is oriented either substantially vertically or substantially horizontally, and having a bolt extending through and being held by the body upon which a keeper is movable along a track defined in the body away from and toward the saddle, said keeper being securable about a conductor seated in the saddle by locking means coacting with the bolt; and said bolt defines the angle of tilt for the saddle relative to the longitudinal central axis.

The Examiner relies on the following references:

McCarthy	530,706	Dec. 11, 1894
Luscomb et al. (Luscomb)	578,825	Mar. 16, 1897
Locke	887,107	May 12, 1908
Hall	3,836,102	Sept. 17, 1974
Kellett et al. (Kellett)	4,727,224	Feb. 23, 1988
Bogdanow	5,064,971	Nov. 12, 1991

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Claims 1, 2, 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hall in view of Bogdanow. Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Hall in view of Bogdanow and further in view of Luscomb, Locke or McCarthy. Claims 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hall in view of Bogdanow and further in view of Kellett. Claims 10 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hall in view of Bogdanow and further in view of Appellant's admitted prior art.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the brief and answer for the respective details thereof.

OPINION

We will not sustain the rejection of claims 1 through 3 and 6 through 11 under 35 U.S.C. § 103.

The Examiner has failed to set forth a ***prima facie*** case. It is the burden of the Examiner to establish why one

having ordinary skill in the art would have been led to the claimed invention by the express teachings or suggestions found in the prior art, or by implications contained in such teachings or suggestions. ***In re Sernaker***, 702 F.2d 989, 995, 217 USPQ 1, 6

(Fed. Cir. 1983). "Additionally, when determining obviousness, the claimed invention should be considered as a whole; there is no legally recognizable 'heart' of the invention." ***Para-Ordnance Mfg. v. SGS Importers Int'l, Inc.***, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), ***cert. denied***, 117 S.Ct. 80 (1996) ***citing W. L. Gore & Assocs., Inc. v. Garlock, Inc.***, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983), ***cert. denied***, 469 U.S. 851 (1984).

Appellant argues on pages 4 and 5 of the brief that Hall fails to teach a saddle of the clamp to be offset at a downward tilting angle from the perpendicular to the central axis. Appellant further argues that Hall fails to teach that the bolt of the clamp defines the angle of tilt for the saddle relative to the longitudinal central axis.

We note that Appellant's claim 1 recites a "saddle being offset at a downward tilting angle from the perpendicular

to the central axis so that the saddle may receive and hold a conductor when the device is oriented either substantially vertically or substantially horizontally." In addition, Appellant's claim 1 recites a fixed position conductor clamp "having a bolt extending through and being held by the body upon which a keeper is movable along a track . . . **said bolt defines the angle of tilt for the saddle relative to the longitudinal central axis.**" (Emphasis added.)

Hall does teach in column 2, lines 30-33, that Figures 2 and 3 show a clamp body 10 being provided with an upwardly opening conductor receiving groove 22 which extends generally perpendicular to the longitudinal axis of the insulator 11. However, we do not agree with the Examiner that this is a teaching of a saddle that is to be offset at a downward tilting angle. The passage merely indicates that the saddle of the clamp is to extend generally perpendicular to the axis of the insulator. Upon a closer inspection of Hall's specification and Figures 2 and 3, we note that the bolt 36 as well as the saddle is not downwardly titled but is parallel to the central axis.

The Federal Circuit states that "[t]he mere fact that the prior art may be modified in the manner suggested by the

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Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." ***In re Fritch***, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992), ***citing In re Gordon***, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

We find that neither Hall nor Bogdanow suggests or teaches a saddle being offset at a downward tilting angle from the perpendicular to the central axis or a bolt extending through and being held by the body upon which a keeper is movable along a track in which the bolt defines the angle of tilt for the saddle relative to the longitudinal central axis. Our reviewing court requires this evidence in order to establish a ***prima facie*** case. ***In re Knapp-Monarch Co.***, 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961); ***In re Cofer***, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966). Therefore, we find that the Examiner has failed to establish why one having ordinary skill in the art would have been led to the claimed invention by teachings or suggestions found in the prior art.

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We have not sustained the rejection of claims 1 through 3 and 6 through 11 under 35 U.S.C. § 103. Accordingly, the Examiner's decision is reversed.

REVERSED

LEE E. BARRETT)	
Administrative Patent Judge)	
)	
)	
MICHAEL R. FLEMING)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JAMESON LEE)	
Administrative Patent Judge)	

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